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In The

Supreme Court of the United States

October Term, 1977

No. 77-1295

EDWARD F. BURKE,

Petitioner,

v.

THE NARRAGANSETT ELECTRIC COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF RHODE ISLAND

BRIEF AMICUS CURIAE IN SUPPORT OF PETITION

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PREFACE

This brief in support of the issuance of the writ of certiorari requested by Petitioner is filed with the consent of the parties to this proceeding, written consent having been received from Petitioner's Counsel on March 22, 1978 and from counsel for Respondent on March 29, 1978.

Alternatively it is asserted that the Pennsylvania Public Utility Commission, which is an independent regulatory commission created by the Pennsylvania General Assembly for the purpose of regulating the rates and service of public utilities within Pennsylvania and having its own legal officer, is authorized to file this brief under the provisions of Supreme Court Rule 42(4).

INTEREST OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (Pa. P.U.C.) is charged by the provisions of the Act of May 28, 1937, P.L. 1053, 66 P.S. §1101 *et seq.*, with the regulation of the rates for service charged by electricity distribution utilities operating within the Commonwealth of Pennsylvania. In the exercise of this responsibility the Pa. P.U.C. scrutinizes the operating expenses of these jurisdictional utilities. The purpose of such scrutiny is to determine whether these expenses are reasonable, and therefore includable in the rates of those companies. This Act contains provisions similar to Sections 39-3-28, 39-3-30, and 39-3-32 of the Rhode Island General Laws. Act of May 28, 1937, P.L. 1053, §701.1 (replacing §701 of the same act which section was repealed by the Act of October 7, 1976, P.L. 1057). Both Sections require filing of contracts or arrangements between affiliated utilities with the Pa. P.U.C., provide for investigation thereof by the Pa. P.U.C., and further require that the Pa. P.U.C. disallow for ratemaking purposes such payments made under these contracts or arrangements as are unjust and unreasonable.

A significant portion of the operating expenses of Pa. P.U.C. jurisdictional utilities is represented by electric power either purchased by distribution companies from electricity generating companies or received by distribution companies from generating companies from the interchange network which connects the transmission systems of Pennsylvania distribution utilities with each other and with companies outside the state.

The rates for these contract purchases and interchange receipts are set by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act, 16 U.S.C. §§824 *et seq.* If petitioner in this proceeding prevails on the merits the consequences for the Pa. P.U.C. will be of major

significance. In that event the scope of the Pa. P.U.C.'s regulatory effort will be greatly expanded, inasmuch as the amount of wholesale energy received by electricity distribution utilities in Pennsylvania is very large. For example, in calendar year 1976, approximately twenty-four billion kilowatt hours of electricity were received from generating companies by distribution companies whose rates for retail service are regulated by the Pa. P.U.C. This total represents approximately 30 percent of the total 1976 retail sales by electricity distribution utilities in Pennsylvania. More than three hundred and fifty million dollars was paid by those distribution companies on account of such contract purchases or interchange receipts. Of these amounts more than 25% accrued from contracts or interchanges between associated entities. Forms filed with the FERC and the Pa. P.U.C. disclose for the 1976 period that eleven contract arrangements and thirteen interchange agreements existed between such associated entities.*

A ruling by the United States Supreme Court on the merits in this proceeding would establish firmly a major boundary between federal and state regulation of electricity rates. The amounts at issue in drawing such a boundary are of major impact to the retail electricity consumers of Pennsylvania. A decision on the merits favorable to petitioner would confirm the authority of state utility regulatory commissions, such as the Pa. P.U.C., to examine the

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*All statistical information contained in this paragraph is taken from Annual Reports required by law to be filed with the Pa. P.U.C. Act of May 28, 1937, P.L. 1053, §906, 66 P.S. §1346. These reports are similar to those filed with the FERC. A copy of such a report's purchased and interchange power sections is attached hereto as "Annex A." Cost for received interchange power was calculated from these forms as follows:

$$\text{Cost of Received Interchange Power} = \frac{\text{Column i total}}{\text{Column h total}} \times \text{Column f total}$$

reasonableness of a substantial portion of the operating expenses of electricity distribution utilities whose rates are regulated by them.

ARGUMENT

Petitioner in this matter adequately defines the issues brought before this Court. That definition will not be repeated here.

The Pa. P.U.C. hereby seeks only to establish the importance of that issue within the Commonwealth of Pennsylvania so as to support petitioner's assertion that this issue is of major national significance. The preceding statement of the interest of the Pa. P.U.C. in this proceeding serves to show such significance. As noted, wholesale exchanges of electricity where the recipient is a distribution company whose rates are subject to Pa. P.U.C. jurisdiction amounted to approximately twenty-four billion kilowatt hours and three hundred and fifty million dollars in 1976, the last full year for which reports have, as of this date, been filed.

There is no reason to expect that these figures will be lower for succeeding years. Sales and exchanges of electricity are becoming an increasingly integral element of the process of electricity generation and distribution. Disparities in prices of generating fuels, accelerating cost increases in plant construction costs, and fuel availability are among the factors which create wide divergences in the per kilowatt hour cost of generation from plant to plant. In recognition of these disparities greater sophistication is being steadily achieved in the process of minimizing generation costs by means of lowest cost generation programs which manage generation on a multi-company basis.

The Pennsylvania-New Jersey-Maryland interconnection (PJM) illustrates this sophistication. Member companies

from four separate states are part of a computer system which determines the most cost efficient generation for the then current demand caused by the member companies' customer loads. Because the optimum generation mix changes with the demand, the amount each member company's generation feeds the demand of other members (as well as the amount each company receives from the generation of other members) is constantly changing. For the appropriate accounting periods each company's net import and export amounts are calculated and appropriate money settlements made.

Thus it is observed that these interchanges and settlements are a daily factor in the process of maintaining retail electricity service adequately and economically.

The interchange ability is of major importance in meeting emergency needs as well. The lengthy miners' strike recently concluded threatened serious service cutbacks for companies bound primarily to coal fired generation. The availability of purchased and interchange power from companies employing oil and nuclear fired generation was a major factor in the ability of the recipient companies to extend the life of coal stockpiles. Understandably the entire pattern of wholesale power exchanges was altered by the forced reduction in coal fired generation of electricity. Such drastic alterations materially affect the costs of providing services subject to the jurisdiction of the Pa. P.U.C.

The importance of wholesale electricity exchanges to the Pa. P.U.C., and presumably to other such state commissions, is then clearly illustrated in the showing that such exchanges are an integral part of the retail distribution of electricity, which distribution is in Pennsylvania under the statutory authority of the Pa. P.U.C. And the exercise of that jurisdiction would be substantially affected by answer to the question whether state utility regulatory commissions

may investigate the reasonableness of the millions of dollars charged for the billions of kilowatt hours sold under FERC tariffs and recovered for under state commission tariffs governing retail electricity rates.

The national significance of a decision on the merits of this proceeding is manifest.

CONCLUSION

Wherefore, the Pennsylvania Public Utility Commission requests that the United States Supreme Court issue a writ of certiorari to review the judgment of the Supreme Court of Rhode Island, entered in these proceedings on the 30th day of December, 1977.

Submitted by:

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ANNEX A

Annual report of Pennsylvania Power Company Year ended December 31, 1976

PURCHASED POWER (Account 555)
(Except interchange power)

1. Report power purchased for resale during the year. Exclude from this schedule and report on page 424 particulars concerning interchange power transactions during the year.
2. Provide subheadings and classify purchases as to (1) Associated Utilities, (2) Nonassociated Utilities, (3) Associated Nonutilities, (4) Other Nonutilities, (5) Municipalities, (6) Cooperatives, and (7) Other Public Authorities. For each purchase designate statistical classification in column (b), thus: firm power, FP; dump or surplus power, DP; other, O, and place an "x" in column (c) if purchase involves import across a state line.
3. Report separately firm, dump, and other power purchased from the same company. Describe the nature of any purchases classified as Other Power, column (b).

Line No.	Purchased From (a)	Statistical Classification (b)	Import across State Lines (c)	F.P.C. Rate Schedule No. of Seller (d)	Point of Receipt (e)	Substation (f)	Kw or Kva of Demand (Specify which): Contract demand (g)	Average monthly maximum demand (h)	Annual maximum demand (i)
1	ASSOCIATED UTILITIES								
2	NONE								
3	NON-ASSOCIATED UTILITIES								
4	OHIO VALLEY ELECTRIC CORP. a/c AEC(1)	FP	X	-	VARIOUS (2)		-	-	-
5									
6									
7									
8									
9									
10	(1) PURCHASE OF SURPLUS POWER IS PURSUANT TO ARTICLE 6 OF INTER-COMPANY								
11	POWER AGREEMENT AMONG OVEC AND SPONSORING COMPANIES DATED JULY 10, 1953								
12	BY MODIFICATION NO. 1 DATED JUNE 3, 1966, MODIFICATION NO. 2 DATED								
13	JANUARY 7, 1967 AND MODIFICATION NO. 3 DATED NOVEMBER 15, 1967.								
14	(2) RESPONDENT OPERATES IN A CLOSED LOOP WITH OTHER UTILITIES, AND THE ENERGY								
15	TRANSFERRED IS NOT CLASSIFIED INDIVIDUALLY AT THE VARIOUS TRANSFER								
16	POINTS.								
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PURCHASED POWER (Account 555) (Continued)
(Except Interchange power)

4. If receipt of power is at a substation indicate ownership in column (f), thus: respondent owned or leased, RS; seller owned or leased, SS.
5. If a fixed number of kilowatts of maximum demand is specified in the power contract as a basis of billing, this number should be shown in column (g). The number of kilowatts of maximum demand to be shown in columns (h) and (i) should be actual based on monthly readings and should be furnished whether or not used in the determination of demand charges. Show in column (j) type of demand reading (instantaneous, 15, 30, or 60 minutes integrated).
6. The number of kilowatt hours purchased should be the quantities shown by the power bills.
7. Explain any amounts entered in column (o) such as fuel or other adjustments.

Line No.	Name of company (a)	Statistical Classification (b)	Rate Schedule Number (c)	Point of delivery (d)	Voltage at which delivered (e)	KILOWATT-HOURS Purchased (f)	KILOWATT-HOURS Interchange-out (g)	KILOWATT-HOURS Net Interchange (h)	KILOWATT-HOURS Total (i)	Cost per kwh (j)
1	Ohio Edison Co.	OS	9A.11A	Pa.-Ohio State Line	23,000	425,711,600	282,968,000	142,743,600	142,743,600	0.97
2	Economy Power				69,000	277,838,406	19,786,000	258,052,406	258,052,406	
3	Other				138,000	10,261,000	-	10,261,000	10,261,000	
4	CAPCO-Bruce Mansfield #1				345,000	2,983,000	-	2,983,000	2,983,000	
5	CAPCO-Beaver Valley #1									
6	Total-Associated Utilities					716,794,006	302,754,000	414,040,006	414,040,006	
7										
8	Non-Associated Utilities									
9	Duquesne Light Co.		21	N. Sewickley Twp.-Beaver Co., Pa.	69,000	-	1,441,000	(1,441,000)	(1,441,000)	
10	West Penn Power		20	Connoquenessing Twp.-Butler Co., Pa. and Pine Twp., Mercer Co., Pa.	138,000	205,000	-	205,000	205,000	
11					69,000					
12	Toledo Edison Co.	X		See Note (1)	345,000	-	4,105,000	(4,105,000)	(4,105,000)	
13	CAPCO Replacement Energy	X		See Note (1)	345,000	12,371,000	5,201,000	7,170,000	7,170,000	
14	Interchange Power Net					729,370,006	313,501,000	415,869,006	415,869,006	
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Type of demand reading (i)	Voltage at which received (k)	Kilowatt-hours (l)	Demand Charges ($) (m)	Energy Charges ($) (n)	Other Charges ($) (o)	Total ($) (p)	Cost per kwh (q)
-	-	57,739,000	-	-	568,494	568,494	0.97
		$1,732,000	-	-	568,494	568,494	0.97

INTERCHANGE POWER (Included in Account 555)

1. Report below all of the kilowatt-hours received and delivered during the year. For receipts and deliveries under interchange power agreements, show the net charge or credit resulting therefrom.
2. Provide subheadings and classify interchanges as to (1) Associated Utilities, (2) Nonassociated Utilities, (3) Associated Nonutilities, (4) Other Nonutilities, (5) Municipalities, (6) Cooperatives, and (7) Other Public Authorities. For each interchange across a state line place an "X" in column (b).
3. Particulars of settlements for interchange power shall be furnished in a footnote or supplemental schedule which includes the name of each company, the nature of the transaction, and the dollar amounts involved. If settlement for any transaction also includes credit or debit amounts other than for increment generation expenses, show such other component amounts separately, in addition to debit or credit for increment generation expenses, and give a brief explanation of the factors and principles under which such other component amounts were determined. If such settlement represents the net of debits and credits under an interconnection, power pooling, coordination, or other such arrangement, submit a copy of the annual summary of transactions and billings among the parties to the agreement. If the amount of settlement reported in this schedule for any transaction does not represent all of the charges and credits covered by the agreement, furnish in a footnote a description of the other debits and credits and state the amounts and accounts in which such other amounts are included for the year.

Summary of Interchange According to Companies and Points of Interchange

Line No.	Name of company (a)	Interchanges across State lines (b)	FPC Rate Schedule Number (c)	Point of Interchange (d)	Voltage at which interchanged (e)	KILOWATT-HOURS Received (f)	KILOWATT-HOURS Delivered (g)	KILOWATT-HOURS Net difference (h)	Amount of settlement (i)
1	Associated Utilities								
2	Ohio Edison Co.	X	9A.11A	Pa.-Ohio State Line	23,000				
3	Economy Power				69,000	425,711,600	282,968,000	142,743,600	1,413,241
4	Other				138,000	277,838,406	19,786,000	258,052,406	5,389,987
5	CAPCO-Bruce Mansfield #1				345,000	10,261,000	-	10,261,000	266,558
6	CAPCO-Beaver Valley #1					2,983,000	-	2,983,000	160,049
7	Total-Associated Utilities					716,794,006	302,754,000	414,040,006	7,229,835
8									
9	Non-Associated Utilities								
10	Duquesne Light Co.		21	N. Sewickley Twp.-Beaver Co., Pa.	69,000	-	1,441,000	(1,441,000)	(13,831)
11	West Penn Power		20	Connoquenessing Twp.-Butler Co., Pa. and Pine Twp., Mercer Co., Pa.	138,000	205,000	-	205,000	3,587
12					69,000				
13	Toledo Edison Co.	X		See Note (1)	345,000	-	4,105,000	(4,105,000)	(51,042)
14	CAPCO Replacement Energy	X		See Note (1)	345,000	12,371,000	5,201,000	7,170,000	301,140
15	Interchange Power Net					729,370,006	313,501,000	415,869,006	7,469,689
16									
17									
18									
19									
20									
21	(1) Respondent operates in a closed loop with other utilities and the energy transferred is not classified individually at the various transfer points.								
22									
23									